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Marie T. Breslin
Director
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CC Docket 95-116

March 22, 1996

RECEIVED
MAY 12 1997
Federal Communications Commission
Office of Secretary

Mr. Richard Metzger
Deputy Chief - Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Metzger:

The information you requested on Direct Inward Dialing (DID) and Remote Call Forwarding (RCF) costs falls into two categories, public and proprietary data filed with the state commissions.

With respect to public information, attached is the BA-Maryland tariff, filed January 26, 1996, for co-carrier interim number portability. In conformance with the Maryland PSC's Order in Case No. 8584-II, that co-carrier call forwarding option was explicitly designed to be cost-based.

Also attached is a copy of BA-Maryland's Petition for Reconsideration and Clarification of the Maryland Commission's Phase II Order that explains the basis for BA-Maryland's proposed rate structure for co-carrier call forwarding. As the Petition notes, the Maryland Commission's order that co-carrier call forwarding be provided on a per number basis is inconsistent with the way costs are actually incurred in providing this service. Accordingly, BA-Maryland proposed an alternative, usage based rate, which mirrors the way costs are actually incurred.

Flex DID service was only offered in Maryland in response to the co-carriers' initial preference for this service to meet their interim number portability requirements. This co-carrier request was satisfied by making the existing DID service in Maryland available to co-carriers. No cost study was necessary to support this tariff change. Subsequent to BA-Maryland tariffing the service, the co-carriers determined that they would prefer a call forwarding-based solution. To date, no co-carrier has purchased the Flex DID option.

With respect to the proprietary cost data you requested, data on the co-carrier call forwarding costs are currently on file, under protective seal, in Maryland and Pennsylvania. We would also be willing to make such data available to the Commission under non-disclosure type agreement similar to the agreements we have with our state regulators.

Please call me if you have any questions.

Sincerely,

Marie Breslin

cc: S. McMaster

No. of Copies rec'd
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SERVICES FOR OTHER TELEPHONE COMPANIES
P.S.C. Md.-No. 216

Bell Atlantic - Maryland, Inc.

Section 7
Original Page 1

NUMBER PORTABILITY-INTERIM

(N)

A. GENERAL

Number Portability-Interim (NP-I) Service is a service provided by BA-Md. to Other Telephone Companies (OTC). It allows an end-user customer of BA-Md. to subscribe to local exchange service from an OTC and to retain the telephone number assigned by BA-Md. under the same terms and conditions as any BA-Md. local exchange subscriber.

B. REGULATIONS

1. NP-I services and facilities will only be provided where technically feasible, subject to the availability of facilities, and from properly equipped central offices. NP-I services and facilities are not offered for NXX codes 555, 915, 976, 950 or BA-Md. coin telephone service.
2. NP-I services are not available for end-user customer accounts of BA-Md. if payments from the end-user customer are 90 days or more in arrears unless full payment is made or an agreement is reached in which the OTC agrees to make full payment on behalf of the end-user customer.
3. When the exchange service offering(s) associated with NP-I services is (are) provisioned using remote switch(es), NP-I service is only available from the host central office.
4. The OTC is responsible for all charges to NP-I numbers and for the final termination of the calls to its end-users.
5. Only customer-dialed, sent-paid calls will be forwarded to the OTC.
6. NP-I service will be provided with two call paths per number when ordered with the flat rate option.

NP-I service will be provided with the OTC-specified number of paths when ordered with the measured use option. A maximum of 99 NP-I paths can be ordered on the measured rate option so long as facilities exist and no interference or impairment of any other services offered by the Company results. Additional paths, when ordered subsequent to the initial placement of NP-I service, will incur a charge for installation and a service order charge.

7. NP-I service is not represented as suitable for satisfactory transmission of data.
8. NP-I service may only be used to forward calls to an OTC number that is associated with the same exchange as the BA-Md number.
9. NP-I service is only offered to OTCs which provide the equivalent of NP-I service.

(N)

SERVICES FOR OTHER TELEPHONE COMPANIES
P. S. C. Md. - No. 216

Bell Atlantic - Maryland, Inc.

Section 7
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NUMBER PORTABILITY-INTERIM

B. REGULATIONS

(N)

10. Referral service, in which an automated announcement is made advising the caller that the end-user being called has a new telephone number, is not available on NP-I service when the end-user disconnects from the OTC.
11. Responsibilities of the OTC
 - a. The OTC is solely responsible to obtain authorization from the end-user for the handling of the disconnect of the end-user's service with BA-Md., the provision of service by the OTC and for the provision of NP-I services. Should a dispute or discrepancy arise regarding the authority of the OTC to act on behalf of the end-user customer, the OTC is responsible for providing written evidence to BA-Md. of its authority to do so. In the event that the OTC is unable to provide such authorization in a form satisfactory to the BA-Md., BA-Md. may refuse to disconnect the end-user's service or establish NP-I service as requested by the OTC.
 - b. It is the sole responsibility of the OTC to insure that both the end-user customer's assigned telephone number and the NP-I number are forwarded to the data base for 911 emergency services in addition to the address of the end-user customer. BA-Md. assumes no responsibility for the accuracy of the 911 data supplied by the OTC to BA-Md.
12. Responsibilities of BA-Md.

BA-Md.'s sole responsibility is to comply with the service requests it receives from the OTC and to provide NP-I in accordance with its tariff. In the event that BA-Md. becomes aware that a dispute or discrepancy may have occurred, the OTC may be required to provide written evidence of its authority from the end-user before BA-Md. terminates the end-user's service and establishes NP-I.

C. RATES

<u>NP-I Service</u>	<u>Service Installation</u>		<u>Per</u>	<u>USOC</u>
	<u>Order</u>	<u>Charge</u>		
Flat Rate			<u>Month</u>	
per number (includes two paths)	\$6.00	\$4.00	\$1.98	
Measured Rate				
per number	6.00	4.00	\$1.00	UNMRF
per minute or fraction thereof			.001	
additional path (subsequent to initial order	6.00	4.00		UNMRA (N)

**BEFORE THE PUBLIC
SERVICE COMMISSION OF MARYLAND**

In the Matter of the Application of MFS)	
Intelenet of Maryland, Inc. For)	
Authority to Provide and Resell Local)	
Exchange and Intrastate Interexchange)	
Telecommunications Services in Areas)	Case No. 8584-II
Served by C&P Telephone Company of)	
Maryland; and For an Order Establishing)	
Policies and Requirements for the)	
Interconnection of Competing Local)	
Exchange Networks)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION
ON BEHALF OF
BELL ATLANTIC - MARYLAND, INC.**

**Mark J. Mathis
Of Counsel**

**David K. Hall
Michael D. Lowe
Randal S. Milch**

**Attorneys for Bell Atlantic -
Maryland, Inc.**

Dated: January 26, 1996

**BEFORE THE PUBLIC
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Exchange Networks)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION
ON BEHALF OF
BELL ATLANTIC - MARYLAND, INC.**

Bell Atlantic - Maryland, Inc. ("BA-Maryland") respectfully requests that the Commission reconsider or clarify its Order No. 72348 ("Phase II Order") in three respects. First, the Commission should reconsider and reverse its decision that the interim unbundled loop pricing methodology – first proposed by Staff for the pricing of unbundled business loops – is applicable to residence loops as well. Unless changed, the Commission's decision will require BA-Maryland to provide AT&T and other competitors authorized to provide residential service with unbundled loops far below cost. Application of this method to residential loops, even on an interim basis, has no support in the Phase II record, goes against years of Commission philosophy on the pricing of services to competitors, and raises serious constitutional issues.

The Commission should also reconsider its assertion of jurisdiction over interstate local calls to the District of Columbia and Virginia. The Commission requirement that all calls originated or terminated in Maryland must be delivered to Points of Interconnection ("POIs") within the state improperly ousts the Public Service Commission of the District of Columbia and the Virginia State Corporation Commission from exercising their authority over these interstate local calls. Moreover, the Commission's decision will require BA-Maryland to incur significant additional expenses — including the potential construction of a new, and otherwise unnecessary, access tandem in Maryland — if it is to follow existing, nationally recognized rules governing access.

Finally, the Commission should clarify its decision on the pricing of BA-Maryland's interim co-carrier call forwarding number portability service. The Phase II Order clearly states that BA-Maryland should be permitted to recover its costs for this service, yet requires the service to be priced on a per number basis, when costs are incurred according to the usage of the forwarding service. BA-Maryland will propose a simple and equitable solution to this problem, and the Commission should clarify its decision to permit BA-Maryland's pricing alternative.

A. The Commission's Interim Unbundled Loop Pricing Methodology Can Not be Used for Unbundled Residence Loops

The Order adopts an interim pricing methodology for unbundled loops and ports in which the existing dial tone line rate is split between loop and port in the same proportion as the direct costs of those components. (Phase II Order at 38). While BA-

Maryland did not support this proposal as either a permanent or an interim pricing structure, it is not objecting to its interim, short term use for unbundled business loops. Although residential issues were not before it, the Commission also held that this same interim method should be used to price unbundled residential loops. (Id. at 39-40). There is no basis to use this methodology, even on an interim basis, to price unbundled loops used for competitive residential services and, in this respect, the Commission's Order must be reconsidered.

The interim pricing method starts with the retail dial tone line rate. For unbundled "business" loops,¹ this means apportioning a rate of \$13.34 (in Rate Group A) and \$15.76 (in Rate Group B). For unbundled "residential" loops, however, the starting point is the dial tone line rate of \$6.11 (in Rate Group A), and \$7.96 (in Rate Group B). Even if these rates were charged for just the unbundled loop instead of apportioning this amount between the loop and the port, the Phase II Order would force BA-Maryland to provide unbundled residential loops to its competitors at rates which are far below cost. For a number of reasons, this decision must be reversed.

First, the record before the Commission is simply inadequate for any determination of the price of unbundled residential loops. Commissioner Brogan made

¹ In reality, there is no functional distinction between an unbundled "business" loop and an unbundled "residence" loop. There is, however, a distinction between the length (and hence the cost) of the shorter average loop used for business and the longer average loop used for residences. Once the loop is unbundled from BA-Maryland's switch, BA-Maryland has no ability to determine whether the end-user is in fact a business or residential customer. For this reason, BA-Maryland's permanent unbundled loop offering, which, pursuant to the Phase II Order, will be based on the cost of supplying the unbundled loop, will not distinguish between the type of service provided by the co-carrier over the unbundled loop.

clear on a number of occasions that Phase II was not concerned with "residential service" and the issues raised by TCG's and SBC Media Venture's petitions to provide that service. (Tr. 964, 1492). In the absence of a fully developed record, therefore, the Commission should refrain from imposing these interim rules for residential services.

Second, requiring BA-Maryland to provide unbundled residential loops to its competitors at rates which are below cost goes against long-standing Commission policy to ensure that "resale of BA-Md's service [is] at rates that cover costs." (Phase I Order at 34). Indeed, applying the interim pricing method to residential loops is utterly inconsistent with the Commission's Phase II decision that the permanent unbundled loop rate should "cover long run incremental costs plus a contribution to BA-MD's joint and common costs." (Phase II Order at 36). While the Commission cited some basis for believing that the interim method will produce a rate that covers BA-MD's average costs of supplying shorter unbundled business loops in the near term (Phase II Order at 39),² there is no evidence that BA-Maryland will cover its costs of supplying longer and more costly unbundled residential loops even if it can charge the entire dial tone line rate for an unbundled residential loop instead of apportioning the rate between the loop and the port. The Commission should not adopt a pricing rule -- even an interim rule -- that will require BA-Maryland to subsidize its competitors.

² In fact, the interim rate will not cover the costs of providing an unbundled business loop, as demonstrated in the cost study supporting the unbundled loop tariff which BA-Maryland filed in November, 1995. That study shows that it costs more to provide an unbundled loop than a dial tone line. This problem, however, can be corrected in the near future when BA-Maryland files its tariff for a permanent unbundled loop rate.

Finally, the Commission's decision to require BA-Maryland to provide unbundled residential loops below cost raises significant questions of unconstitutional confiscation. Although the Commission has broad latitude to set rates, its discretion is limited by the prohibitions on confiscating property without just compensation in both the United States Constitution³ and the Maryland Constitution.⁴ Applying the interim methodology to unbundled residential loops would require BA-Maryland to provide its competitors with "services at rates less than the actual costs of such services, . . . [which] would amount to confiscation." Public Service Commission v. The Northern Central RR Co., 122 Md. 355 (1914). The Commission should avoid these constitutional pitfalls and reverse its decision to apply the interim pricing method to unbundled residential loops.

There is no pressing need for the Commission to adopt an interim rule for the pricing of unbundled residential loops. The Commission has only recently authorized one co-carrier, AT&T, to provide residential service, and AT&T has said that it is not yet ready to provide this service. Moreover, in approving AT&T's application, the Commission recognized that it would have to address a number of issues -- specifically including residential issues -- in other proceedings before AT&T could begin to provide service. The Commission should therefore reconsider its Phase II Order and

³ The Takings Clause of the Fifth Amendment to the U.S. Constitution prohibits the taking of "private property . . . for public use, without just compensation." The Takings Clause is made applicable to the states through the Fourteenth Amendment. Chicago, B. & O. RR. Co. v. Chicago, 166 U. S. 226, 239 (1897).

⁴ Art. III, § 40 of the Maryland Constitution also prohibits the taking of "private property . . . for public use, without just compensation."

fully develop a record before deciding how unbundled residential loops should be priced.

B. The Commission Improperly Asserted Jurisdiction Over The Co-Carriers' Interstate Local Calls, and Its Requirement That BA-Maryland Accept These Calls at a POI in Maryland Will Result in Unnecessary and Expensive Network Reconfiguration

The co-carriers operating in the Maryland suburbs of Washington would like to offer their customers the ability to make local calls across state lines into the Washington and Virginia portions of the Washington Metropolitan Exchange Area (WMEA). The co-carriers, however, have refused to seek approved arrangements in the District and Virginia to meet their customers' needs, and have instead looked to this Commission to relieve them of the multi-jurisdictional regulatory responsibilities that go along with multi-jurisdictional service. The Phase II Order does just that by requiring BA-Maryland to unnecessarily and expensively alter its network.

The Commission's decision on interstate local calls improperly ousts the D.C. and Virginia regulators from their legitimate oversight of the rates to be charged by BA-DC and BA-Virginia for the termination of co-carriers' calls. First, the Commission's Order requires that, for all local traffic originating or terminating in Maryland, all points of interconnection (POIs) must be located in Maryland.⁵ Second, the Phase II Order provides that this Commission's local termination rates will be applicable to all calls

⁵ Order at 72. The Commission may have believed that the existing network permitted all WMEA local traffic (whether intrastate or interstate) to be delivered to POI in Maryland. *Id.* at 67. This is not the case. Although BA-Maryland at one time employed local and toll tandems in the Washington suburbs, those tandems were eliminated in the 1980's and the more efficient network architecture using the access tandem in the District of Columbia was put in place.

terminating at Maryland POIs, regardless of their actual origin or destination. (Order at 72.) Thus, by Commission fiat, all interstate local calls will have to be exchanged and rated in Maryland, and the Commission has thereby elbowed aside its Washington and Virginia counterparts.

The Commission's jurisdictional overreaching is obvious if one supposes for a moment that the Virginia or D.C. Commission were to adopt the very same rules. If the Virginia State Corporation Commission were to mandate that all local calls originating in Virginia and destined for Maryland must be delivered to a POI in Virginia -- and that BA-VA must apply its approved local termination rate to these calls -- either BA-Maryland or BA-Virginia would be forced to violate its Commission's policy. For example, for a local call originating in Maryland and terminating in Virginia, the Maryland rules would require that call to be terminated at a POI in Maryland, and for the Maryland termination rate to apply. The Virginia rules, however, would require that same call to be terminated at a POI in Virginia, and for the Virginia termination rate to apply. The same problem would exist for a call originating in Virginia and terminating in Maryland. In either case, it would be impossible to comply with both rules. This Commission simply cannot adopt a rule that would result in conflicting -- and impossible -- implementation requirements if neighboring jurisdictions do no more than establish the very same policy.⁶

⁶ Because it would be impossible for BA-Maryland to comply with the Commission's rule if every jurisdiction applied it, the Commission's jurisdictional decision may well place an impermissible burden on interstate commerce which violates the Commerce Clause of the United States Constitution. U.S. Const. Art. I, § 8. See American Trucking Assn., Inc. v. Scheiner, 483 U.S. 266, 284 (1987).

The Commission's decision also raises serious network reconfiguration issues. In order to increase efficiency, BA-Maryland currently permits co-carriers to use combined trunk groups to deliver local and toll traffic. Using a combined trunk group, however, requires common local and toll points of interconnection, as defined in the national Local Exchange Routing Guide (LERG) used by all interexchange carriers and LECs to route their traffic.⁷ If the Commission were to insist that BA-Maryland set up a POI in suburban Maryland to accept local calls destined for the District and Virginia, one of two things would have to happen: either co-carriers will need to use separate trunks – one to deliver local traffic to the Maryland suburban POI required by the Phase II Order and the other to deliver toll traffic to the destination now published in the LERG and universally used by all carriers – or BA-Maryland will have to establish a new, otherwise unneeded multi-million dollar access tandem in suburban Maryland and reroute all Maryland traffic to it. Building a new access tandem would impose very significant network expenses not only on BA-Maryland (for purchasing and deploying a new switch) but also on all interexchange carriers and co-carriers now routing traffic to the existing tandem in the District of Columbia (for deploying new trunking facilities to reroute calls).

The Commission's jurisdictional decision must be reconsidered to avoid unnecessary conflict with neighboring Commissions and costly network reconfiguration.

⁷ The Commission recognized the value of maintaining the integrity of the LERG – as well as the fact that there was insufficient evidence before it to "deviat[e] from the LERG for local calls" – when it refused to adopt MFS-I's proposed interconnection protocols. (Phase II Order at 73). The Commission's decision to abide by the LERG should be followed for both interstate and intrastate local calls.

BA-Maryland is willing to work with the co-carriers and the Staff to reach an accommodation that will provide the co-carriers with the multi-jurisdictional calling they desire while maintaining the integrity of the LERG and existing network and trunking efficiencies.⁸ The Phase II Order meets none of these goals.

C. The Commission's Decision That BA-Maryland Must Offer Interim Number Portability On A Per Number Basis Is Inconsistent With The Commission's Ruling That BA-Maryland Must Be Permitted To Recover Its Costs Plus Some Contribution For This Service

The Commission's decision on how to set the rate for BA-Maryland's co-carrier call forwarding interim number portability service is internally inconsistent. On the one hand, the Commission directs that the interim number portability service be priced to recover BA-Maryland's "direct, joint and common costs." (Order at 50). At the same time, however, the Commission adopts Staff's recommendation that the service be priced on a "per number per month" basis. (*Id.*)

The inconsistency arises from the fact that BA-Maryland's costs for co-carrier call forwarding are incurred on a usage basis, not on a per number basis.⁹ There is no evidence in the record contradicting BA-Maryland's proof on this point, and

⁸ As a temporary accommodation to MFS-I, BA-Maryland agreed to accept Maryland-to-Maryland local calls only at a "virtual POI" located in a suburban BA-Maryland end office. These calls were transported by BA-Maryland and BA-DC to the existing access tandem in the District. By limiting the traffic accepted at this "virtual POI" to intrastate calls, however, the jurisdictional and network reconfiguration issues are avoided. BA-Maryland is willing to continue to use this virtual POI for intrastate local calls until a permanent solution to this issue can be reached.

⁹ Tr. 1283-85 (Eppert).

Staff's suggestion that per number pricing will match and cover BA-Maryland's costs had absolutely no foundation in the record.¹⁰

BA-Maryland will attempt to meet the Commission's conflicting commands to recover costs yet to price on a per number basis in its compliance filing by offering co-carriers a choice. Co-carriers can purchase interim number portability on a flat, monthly per number basis which includes two voice paths.¹¹ Alternatively, the co-carrier can choose the option of paying a much smaller monthly per line charge to cover BA-Maryland's non-traffic sensitive costs, and a very small per minute rate (approximately \$0.001 per minute of ported call) to cover BA-Maryland's usage sensitive costs.

BA-Maryland's alternative pricing structure complies with the Commission's direction that BA-Maryland recover its costs (including joint and common costs) and allows co-carriers to buy only the portability capacity that they need to meet

¹⁰ Indeed, Staff's assertions that a forwarded call simply disappears from BA-Maryland's network (Staff Init. 8r. at 50) and that there is no cost associated with forwarding multiple, simultaneous calls (id.) carry no citation to the record -- because there is no evidence backing up Staff's claims.

¹¹ Including two voice paths in the per number option will permit the ported number to receive two simultaneous ported calls. With this capability, co-carriers will be able to offer vertical services, such as call waiting, to their single-line number ported customers just as they can offer these vertical services to their single-line nonported customers.

their customers' requirements. BA-Maryland respectfully suggests that the Commission clarify its Order to permit BA-Maryland to offer this pricing alternative.

Respectfully submitted,

David K. Hall

David K. Hall
Michael D. Lowe
Randal S. Milch

Mark J. Mathis
Of Counsel

Dated: January 26, 1996

Attorneys for Bell Atlantic -
Maryland, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Reconsideration and Clarification of Bell Atlantic - Maryland, Inc. was served on All Parties in this case on this 26th day of January, 1996, by hand-delivery or by overnight mail.

David K. Hall

David K. Hall